

CHILD WELFARE IN CANADA

—PART II—

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Child Abuse, Child Protection and Treatment Process,
Criminal Court Proceedings,
International Comparison of Child Protection

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PART II CHILD PROTECTION

In Canada, provincial, territorial, Aboriginal and private non-profit child welfare agencies have responsibility for child and family services and are mandated to protect children under the age of sixteen. The

agencies are legally obligated to look into allegations of child abuse and neglect and are, for the most part, crisis oriented. More recently, child protection services have come under scrutiny as a result of high-profile child deaths during custody.

This paper outlines the history of child protection; definition of child abuse; outline of child protection and treatment; and triangular comparison of child protection and prevention in Canada, Australia and England.

6 . HISTORY OF CHILD PROTECTION

Child abuse or violence in a family is not a recent phenomenon. Historical analyses demonstrate that it has long been a characteristic of family life, and has been tolerated and sanctioned by society, but unfortunately, it is not perceived as serious social problems.

The first concerted efforts at identifying and combating child abuse occurred in the latter part of the 19th century, due to such factors as industrialization, urbanization and immigration. Among the early efforts were measures on behalf of child welfare. Much of the concern was generated by the exploitation of child labour; however attention was also directed to the abuse of children within families. These efforts led to the development of the first laws and mechanisms for the protection of children.

In 1893, the first Canadian legislation was enacted for the establishment of Children's Aid Societies, and judges were given broad authority to commit to Society guardianship young children who were "dependent and neglected," as well as older youths who were "immoral or depraved".

Family violence was revived as a social issue in the early 1960s, when child abuse was once again identified as a major problem by authors documenting the "battered baby syndrome". This received a great deal of coverage in the media and aroused strong public revulsion. The result was reflected in the passage of stronger legislation to protect children and the establishment of systems for reporting and dealing with child abuse.

Child sexual abuse begun recognized as a serious problem in the 1970s when the women's movement was influentially growing. The main concern of the women's movement has focused on father-daughter incest, but this has also served to draw attention to other forms of child sexual abuse.

In the last century, Canada has moved from a dearth of services for children, through a period of broad state powers and instances of institutional abuse, to a time of greater family rights. Now there exists a heightened awareness of child abuse and the need for judicious proactive societal intervention.

7. DEFINITION OF CHILD ABUSE

There is no consensus about definitions of child abuse. Definitions have been shown to vary on the basis of differences in legal mandates, professional practices, and social and cultural values. Several provinces, however, such as British Columbia, Manitoba, and Ontario, have taken steps toward setting more explicit criteria for defining abuse and neglect, although the establishment of completely standardized definitions is constrained by the fact that, in practice, judgments about child maltreatment are shaped by a complex array of changing community interests and values.

The term "abuse" is defined by statute in Manitoba, Ontario, PEI, Nunavut and NWT; these statutory definitions differ in specificity and detail. In jurisdictions that have no explicit definition of the term abuse in their statutes, the definition of "child in need of protection" encompasses child abuse and constitutes grounds for protective intervention.

7.1 Defining The Word "Child Abuse" Its Own

As though each jurisdiction has its own distinct and detailed set of terms and definitions for child abuse contained in child welfare legislation, "child abuse" can be defined in general as "the physical, psychological, social, emotional and sexual maltreatment of a child, whereby the

survival, safety, self-esteem, growth and development of the person are threatened”.

Abusive behavior takes many forms, the following definitions describe some of the most common:

- *Physical Abuse*: physical assaults like pushing, shoving, slapping, punching, kicking, choking, attacking with objects, breaking bones, locking out of one's home, abandonment and murder
- *Sexual Abuse*: premature sexualization by act, exposure of inference; touching of a sexual nature; sexual intercourse; embarrassing children about their developing sexuality (teasing); making children deny their sexuality; denial of privacy; touching or demanding to be touched; involvement in ritual abuse
- *Emotional Abuse*: withdrawing affection; jealousy; rejection; denial of victim's right to emotions; humiliation; acts or omissions that are likely to produce long-term and serious emotional disorders
- *Neglect*: failing to provide basic physical necessities like food, shelter and safety; failing to provide health care and education

Defining “neglect” is a problematic issue for child welfare authorities. it is most often addressed as “abuse by omission” in the jurisdictional statutes and policies that shape the concept of neglect and the required response by authorities. Although academics and child welfare practitioners recognize that child abuse and child neglect are distinct forms of maltreatment, operational definitions of neglect suffer from a lack of clarity.

Child abuse (physical, sexual, emotional or neglect) is considered to be grounds for finding a child to be in need of protection in all jurisdictions except New Brunswick. New Brunswick specifies abuse as grounds to

conclude that a child's security and development is in danger.

7.2 Defining The Words Relating To The Process Of Child Protection And Prevention

Three levels of substantiation: substantiated; suspected; and unsubstantiated, are defined as follows:

- *Substantiated*: if the balance of evidence indicates that abuse or neglect has occurred, the case is considered substantiated. The term is synonymous with the terms “verified” or “confirmed”, which are used in some jurisdictions.
- *Suspected*: if there is not enough evidence to substantiate maltreatment, but there nevertheless remains a suspicion that maltreatment has occurred, the case is suspected.
- *Unsubstantiated*: if there is sufficient evidence to conclude that the child has not been maltreated, the case is unsubstantiated.

7.3 Defining The Factors That Contribute To Abuse

● *Perpetrator*

People who abuse others often believe that: they have a responsibility to control their partners and/or children; it is their duty to punish other family members; certain family members should behave in particular ways; the abused persons are purposely defying them and have sinister motivations behind their behavior; their needs and goals are more important than those of other family members; and the persons they abuse are inferior or unimportant.

People who abuse others often have the following characteristics: having learning to use abusive behaviors; having poor human relations skills; often behaving impulsively; having experiences that caused severe psychological damage, and having inadequate or inappropriate

knowledge.

● *Victim*

People who endure abuse have some or all of the following beliefs: no way of stopping the abuse; it is their own responsibility to the emotional well-being of everyone in the family; they deserve the abuse; the abuser has the right to control and/or punish them; and the cost of leaving will be greater than staying.

● *Family*

Family structures that contribute to abuse tend to be structured as follows:

- Closed type families: there is only one who obviously dominates power and decides what behaviors are appropriate and what is required of each family member, usually the husband and father;
- Random type families: no particular person is clearly in charge and there are many conflicts over who will make the rules;
- Having destructive interaction pattern;
- Having isolated from the rest of the community; and
- Having insufficient resources to meet the needs of all family members

● *Community*

There are several aspects of community functioning that contribute to family violence.

- Denial of the existence of family violence;
- Denial of responsibility for stopping family violence; and
- A lack of appropriate and accessible support services

● *Societal level*

At the societal level, two factors contribute to child abuse: the distribution of resources; and the attitudes prevalent in its culture.

8. CURRENT SITUATION OF CHILD PROTECTION IN CANADA

This section has drawn heavily from the report of *1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS)*, the first nationwide study to examine the incidence of reported child maltreatment and the characteristics of the children and families investigated by Canadian child welfare services. The report presents data on physical abuse, sexual abuse, neglect and emotional maltreatment based on 7,672 investigations from fifty-one sites in all provinces and territories. The following are some of the main findings:

An estimated 135,573 child maltreatment investigations were carried out in Canada in 1998, an annual incidence rate of 21.52 investigations per 1,000 children. An estimated 61,201 child maltreatment investigations (45%) were substantiated, an estimated 20,668 child investigations (22%) remained suspected, and an estimated 44,704 child investigations (33%) were unsubstantiated.

As the primary category of investigated maltreatment, thirty-one percent of child investigations involved alleged physical abuse, ten percent involved sexual abuse, forty percent involved allegations of neglect, and nineteen percent involved emotional abuse.

Most child investigations involved allegations against parents: biological mothers (61%), biological fathers (38%), step-fathers/common-law partners (3%). Other than parents, relatives were the most frequently suspected perpetrators (7%). Substantiation rates for alleged perpetrators ranged from 18% for professionals to 51% for step-mothers.

Eight percent of child maltreatment investigations led to a child being placed in child welfare care (foster placement, group home, or residential/secure treatment) during the initial investigation.

Applications to child welfare court were made in 5% of child

maltreatment investigations and were being considered in an additional 6 % of cases.

Police investigations occurred in 21% of child maltreatment investigations, and criminal charges were laid in 10%. Eight percent of physical abuse investigations and 34% of sexual abuse investigations resulted in charges laid, whereas only 2 % of neglect investigations and 17% of emotional maltreatment investigations resulted in criminal charges being laid.

Regarding child age and sex, to ensure consistency in the application of definitions across Canada, CIS data are reported for children aged 0 to 15 years. The incidence of investigated maltreatment ranged from 18.5 per 1,000 children among 12 to 15 years old males, to 25.08 per 1,000 for females in the same age group.

Twenty-nine percent of child maltreatment investigations involved children who lived with their two biological parents, and in a further 18% children lived in a two-parent blended family. Forty-six percent of cases involved children living in a family led by a lone parent: 40% in a lone female parent household and 6 % in a lone male parent household. Rates of substantiation ranged from 40% (lone female parent) to 46% (two-parent blended/step).

Of those investigations involving children living with a mother, 61% lived with a mother who was over 30 years old and 17% with a mother aged 25 or under. Of investigations involving children living with a father, 75% lived with a father who was over 30 years old and 10% with a father aged 25 or under.

Thirty-nine percent of child maltreatment investigations involved children in families that derived their primary income from full-time employment. Thirty-six percent involved children from families that received social assistance or some other form of benefits, and an additional 10% involved children who lived in families relying on part-time employment/multiple jobs or seasonal employment. In 13% of child investigations the source of income was unknown by the investigating

worker, and in 2 % no reliable source of income was reported.

Substantiation rates ranged from 33% for cases in which the income source was unknown to 54% for cases in which no reliable source of income was identified by the investigating worker.

Fifty-seven percent of child investigations involved children living in rental accommodation (47% in private market rentals and 10% in rental units in a public housing complex). In 26% of investigations children lived in purchased homes, 6 % in other accommodations, and 1 % in shelters or hostels.

9. OUTLINE OF CHILD PROTECTION AND TREATMENT

9.1 Legislations And Policies

Although all child welfare systems share certain basic characteristics organized around investigating reports of alleged maltreatment, providing various types of counseling and supervision, and looking after children in out-of-home care, there is considerable variation in the organization of these services deliver systems. Likewise, child welfare legislations vary considerably (refer Table 1 in Chapter 1 for details about administrative structure of provincial/territorial child protection in Canada).

Table I : Age of majority and age of child as defined
in child protection legislation

Province or Territory	Age of Majority	Age for Protection	Extension Provisions
Newfoundland and Labrador	19	under 16	<ul style="list-style-type: none">● wardship to age 19 (subsequent to Order of Temporary Wardship, Order of Permanent Wardship)● services to age 21 (subsequent to Permanent Guardianship Order)
Prince Edward Island	18	under 18	<ul style="list-style-type: none">● services to age 21 (subsequent to Permanent Guardianship Order)

Nova Scotia	19	under 16	<ul style="list-style-type: none"> ● wardship to age 21 (subsequent to Permanent Care Order)
New Brunswick	19	under 19 ¹⁾	<ul style="list-style-type: none"> ● post Guardianship Service Agreements²⁾ may be signed under certain circumstances for those aged 19 to 23 (inclusive)
Quebec	18	under 18	<ul style="list-style-type: none"> ● foster care may be extended to age 21
Ontario	18	under 16 ³⁾	<ul style="list-style-type: none"> ● wardship to age 18 (subsequent to Society Wardship Order-temporary; Crown Wardship Order-permanent) ● services to age 21 (former Crown wards)
Manitoba	18	under 18	<ul style="list-style-type: none"> ● services to age 21 (subsequent to Permanent Guardianship Order or Voluntary Surrender of Guardianship)
Saskatchewan	18	under 16 ^{3) 4)}	<ul style="list-style-type: none"> ● wardship to age 18 (Permanent, Long-Term Orders) ● Temporary Orders to age 16 ● Voluntary Committals to age 16 ● Voluntary agreements for 16-17 year-olds ● services to age 21 (subsequent to Permanent Committal Order, Long-Term Order to Age 18)
Alberta	18	under 18	<ul style="list-style-type: none"> ● Care and Maintenance Agreement²⁾ services to age 20 (subsequent to Temporary or Permanent Guardianship Order, Support or Custody Agreements entered into with the child)
British Columbia	19	under 19	<ul style="list-style-type: none"> ● Post Majority Service Program²⁾ ● support and/or maintenance to age 21 for current and former permanent wards (Permanent Order)

Yukon	19	under 18	● wardship to age 19 (Order for Temporary Care and Custody, Oder for Permanent Care and Custody)
Northwest Territories & Nunavut	19	under 18	● wardship to age 19 (subsequent to Permanent Guardianship Order)

- 1) Regulations stipulate mandatory provision of child protection services applies only to a child under age 16 (under 19 for a disabled person). Mandatory reporting of a child in need or protection applies only to children under 16; reporting of cases involving children aged 16 to 19 must be done with the child's consent.
- 2) Formal agreement signed by the youth and department.
- 3) Youth 16 and 17 years of age can enter into an agreement for services until age 18.
- 4) In Saskatchewan, a 16 or 17 year-old may be apprehended in extraordinary circumstances.

For Aboriginal people in Canada, the organization of child welfare services falls under provincial and territorial statutes and regulations, although funding for on-reserve services is provided by the federal government under the *Indian Act*. The structure of aboriginal child welfare services is changing rapidly. A growing number of services are being provided either by fully mandated aboriginal agencies or by aboriginal counseling services that work in conjunction with mandated services.

Quebec is the only province in the country that is not governed by common law (the Criminal Code of Canada) in matters relating to family law. Thus, the family law in the Province of Quebec is very different from that of the rest of Canada. The Quebec Civil Code, which was completely revamped in 1994, is used in combination with the Youth Protection Act as the legislative basis for responding to child maltreatment.

Provincial and territorial child welfare statutes vary in terms of the age range covered for child maltreatment investigations. Some jurisdictions limit their investigation mandates to children under 16, while others extend their investigations to youth under 19.

9.2 Steps In Providing Child Protection

The terms and definitions that define child abuse in provincial legislation set the parameters for protective intervention; inform authorities, judges and the public as to the meaning of child maltreatment; and set the standard for acceptable care of children. Child and family services authorities investigate allegations or suspicions of child abuse or neglect using a variety of approaches according to the legislation, policy and protocols in their jurisdiction. Depending on the outcome of the investigation, and where appropriate, these authorities provide protective and preventive services ranging from counseling and support to removing the child from the home on an immediate basis (apprehending) to ensure his or her safety and wellbeing. If a family is unable to adequately protect a child despite the provision of support services, the authorities may temporarily or permanently assume responsibility for the child; this generally involves court action and is referred to as “taking a child into care”. All jurisdictions recognize that the best interests of the child must be a primary consideration in the delivery of child and family services and that the least intrusive form of intervention is preferred.

The scope of services and the range of preventive or protective interventions that are available to children and families vary between jurisdictions. Preventive services may be provided by child welfare authorities with the agreement and cooperation of the family to help resolve difficulties that may lead to abuse or neglect. Where a child is deemed to be in need of protection, authorities may offer services under voluntary agreement with the parent or guardian. Where a child is considered to be in imminent danger, child welfare authorities may apprehend the child. Where a child has been apprehended, or a voluntary agreement is not feasible or appropriate, a child protection hearing is scheduled in the appropriate court of law. The court determines whether the child is in need of protection, and may issue an order concerning the care, custody and/or guardianship of the child.

Child protection procedures are detailed in provincial standards

manuals. Specific criteria for determining whether or not a child is in need of protection are found in provincial child welfare Acts. These Acts outline the conditions under which children are considered to be in need of protection. In general, the steps for providing child protection in Canada are as follows:

● *Mandatory Reporting and Investigation*

In most Canadian jurisdictions, child protection legislation requires that suspected abuse of children be reported to child protection authorities. In Newfoundland and Labrador, Prince Edward Island, Saskatchewan, Nunavut and the Northwest Territories, reports can also be made to the police, who are in turn required to report the allegation to child welfare authorities. In the Yukon, cases may be reported but it is not a statutory requirement to do so. There is significant variation among the provincial laws; however, the common intent is to encourage the reporting of suspicions of child abuse and neglect by establishing the requirement in law, apply sanctions for not reporting, and protect the reporter's identity. The range and level of suspicion of abuse or neglect that requires reporting, and the different standards applied to professionals and non-professionals vary between jurisdictions, as do the penalties for not reporting.

Every jurisdiction in Canada grants immunity from civil action against individuals who report suspicions of child abuse or neglect in good faith. The legal provisions vary somewhat between jurisdictions but the intent to encourage reporting of suspicions made without malice and with reasonable cause is common to all provinces.

The wide range of institutions, agencies and service providers involved with children are often the first points of contact when the suspicion of abuse or neglect arises. Child welfare systems recognize the importance of awareness training for staff and volunteers working in these services and institutions in order for them to meet their statutory obligation to report a suspicion of child abuse. Hospitals, schools,

day care programs, police departments, and other organizations engage child and family services staff for training in the recognition of child abuse and neglect, and developing reporting protocols that encourage accurate and timely reporting of suspected child abuse or neglect.

When reports of child abuse or neglect are received by a child welfare authority or by police, both parties follow investigation protocols based on child welfare legislation and police investigation procedures for that jurisdiction. Reports are screened by child welfare authorities, often using an assessment tool, to determine if an investigation is required.

When an allegation or suspicion of child abuse or neglect is reported to child protection authorities, as much information as possible about the situation is gathered during this initial contact in order to respond appropriately. Workers search a confidential, limited-access database of open, recently closed or investigated child abuse cases for previous involvement with child welfare authorities within the jurisdiction. Authorities use a number of screening procedures that establish thresholds for the level and immediacy of the response, ranging from an immediate investigation to follow-up or a referral to community supports. Some of these screening tools are integrated with the risk assessment instrument used by the jurisdiction (see following section). Reports of abuse or neglect of children over the age of majority in each jurisdiction are investigated by child welfare authorities only if there are siblings under the age of majority who may be at risk in the family.

Depending on the differing statutory definitions of a child in need of protection, each jurisdiction may or may not investigate an allegation that involves an alleged perpetrator who is not a family member. The decision to investigate is influenced by consideration of the access of the accused “third party” to other children, or to the level of care accorded to the third party by an alleged victim’s parent. If the child

welfare authority does not act upon the report, the informant is advised to contact the police to report the situation as a potential criminal offense. In some jurisdictions, family support services may be provided to the families and victims of third party abuse by the department or by other community-based services.

Physical and sexual abuse of children is an offence under the Criminal Code of Canada, which addresses the prosecution of the perpetrator, while the provincial laws focus on the protection of children from harm. In many cases, the joint investigation approach taken by police and child welfare officials minimizes the number of times a child is interviewed, coordinates the involvement of both parties and reduces interference or corruption of either party's case against the alleged perpetrator of abuse. The use of children's videotaped accounts of abuse or neglect during an investigative interview is accepted as evidence in both criminal and protection hearings. Most jurisdictions employ investigation protocols to achieve a high level of collaboration between local police and child welfare authorities, and many protocols involve hospitals or medical experts in coordinated investigations of abuse. Police decide whether to lay charges under the Criminal Code at some point during or after the joint investigative process. The child welfare authority applies the definition of "child in need of protection" to the situation to guide the ensuing child protection process.

Other protocols and procedures apply to investigating allegations of abuse in foster homes or other child-caring facilities; these are addressed in the jurisdictional chapters.

● *Risk and Safety Assessments*

Child protection services in many provinces employ risk assessment processes as part of a case management approach to child protection. All of the different risk assessment and management models currently in use by jurisdictions provide a systematic framework for gathering information about a child and his or her social and physical

environment in order to assess the future likelihood of harm. Risk assessment models are intended to enhance case management by promoting a consistent, structured approach to decision making, focusing resources on children who are most at risk, and directing interventions to reduce risk factors. These tools generally create stronger links between the intent of the legislation and child maltreatment intervention at the individual practice level.

Safety assessments are tools used by intake workers at the reporting/intake phase to measure the immediate risk to a child in order to inform decisions on whether to investigate, whether to apprehend a child, and to structure the timing of child abuse investigations. Safety assessments are also used when there is a change in the circumstances of an open case.

Seven jurisdictions in Canada currently have risk assessment models for child protection (Quebec provides three optional tools to child protection staff). Some risk assessment models use more than one assessment tool to assist front line protection workers. Some assessment tools are adaptations of instruments used in other sites in North America, while others have been specifically developed to be compatible with the legislation and the child welfare service delivery system in the particular province.

● *Apprehension and Court Hearing*

When child welfare authorities confirm the need for protection following an investigation, or when circumstances change in an open case, a child may be taken into the care of the child welfare authority by means of a warrant or a court order to remove the child from the home. An application for a warrant or court order to search for and remove (apprehend) a child from the home is made to the court or a justice of the peace, depending on the jurisdiction.

In situations where a child is believed to be at immediate risk of harm, the worker (or police officer with statutory authority) may

remove the child immediately without a warrant or court order, when and if delays may further endanger the child. In these instances, a court appearance takes place within a prescribed period of time to justify the action and to determine whether the child is in need of protection.

A judge hearing a protection case may also consider an application from the child welfare authority for a custody order for a child found to be in need of protection. A court order for a child's protection can range from returning the child to the parents or guardians under the supervision of a child welfare authority, to temporary or permanent custody by the authority. Each jurisdiction has its own rules and limitations on orders; these are defined in detail in the following chapters.

● *Court Orders*

If, as a result of the protection hearing, the judge finds that a child is in need of protection and a voluntary agreement is not possible, he or she will consider the child's best interests before making an order. Where possible, the judge will attempt to keep the family intact.

The three most common child protection orders are:

- an order for supervision of the child in the home by the child and family services authority (the child remains or is returned home, or is returned to the person who had custody prior to the apprehension);
- an order for the child to be brought into the temporary care of the child and family services authority;
- and an order for the child to be brought into the permanent care of the authority.

Orders that prevent a specific person from having access to a child in need of protection may be made under child protection legislation in Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan,

Alberta, and British Columbia. If a criminal charge has been laid under the Criminal Code of Canada, a “no contact order” as a condition of bail is another means of preventing access to a child.

Under a supervision order, the parent generally retains custody and guardianship of the child and the situation is monitored by the child welfare authority. Under a temporary order, the parent loses custody of the child for the duration of the order; some jurisdictions allow parents to retain guardianship under a temporary order. When a child is brought into permanent care through an order of the court, the parent loses all custody and guardianship rights, allowing the Director or Minister to make all decisions on behalf of the child, including authorizing adoption. The court may attach a variety of terms to any protection order; these may include mandatory provision of support services to the family and, where appropriate, the type and frequency of contact between the child and family. Child and family services authorities must prepare a service or case plan for each child in care outlining the services required and the placement objectives. The long-term goal for a child under a permanent order, particularly for a younger child, is usually adoption; other alternatives, such as preparation for independence may be more appropriate for an older child.

All jurisdictions have appeal processes with respect to child protection orders. Usually the parties to the protection hearing have the right to appeal an order within a prescribed time limit.

● *Criminal Court Proceedings*

When an investigation of child abuse is complete, joint investigative efforts involving child welfare authorities and police follow separate courses according to the respective governing legislation, and depending on the outcome of the investigation. The justice system applies the Criminal Code of Canada to the case by prosecuting an alleged offender while provincial child welfare legislation is applied to protect the child and/or strengthen the family.

In criminal court, various techniques for lessening the stress on a child witness may be employed. In sexual abuse cases, a video of the child's testimony (the contents of which have to be verified by the child in court) or a screen to block the child from the alleged abuser during questioning may be used if the judge or justice is of the opinion that these steps are necessary to obtain a full and candid account by the victim. Courtrooms also use closed circuit television as a means to obtain a full and candid testimony from a child during criminal proceedings. Some jurisdictions have designed special courtrooms and processes that can alleviate the stress and re-traumatization of child abuse victims when they are required to appear at a criminal or protection hearing.

● *Placement of a Child*

Children who are in the temporary or permanent care of child and family service authorities are placed in care environments that match their needs as closely as possible. It is recognized that all children who are placed outside of their families must be supported while experiencing the anxiety and stress of separation from the family. Other factors influencing the type of placement include the level of care needed by the child, the continuation of cultural or faith traditions, the level of involvement of the biological family and the preferences of the child in care.

Placements that are available to children in care range from short-term emergency care through to extended independent living for youth. Foster care resources are used by child welfare authorities to provide a caring, temporary family environment. Many foster care programs are designed to offer graduated levels of caregiver skill and intervention ranging from a typical family context to specialized and supported therapeutic foster care. If available, an extended family member or other significant person may provide care for a particular child; this arrangement is known as kinship or restricted foster care. The maximum duration of foster placements is linked to the type of

orders or agreements that transfer the care of a child from the parent to the foster caregiver. Most jurisdictions have time limits on the duration of temporary orders and out-of-home support agreements.

Group homes, children's mental health facilities, supported independent living, and other placement options are available to children who need specialized therapeutic or long-term placements. These programs vary between jurisdictions and are addressed in the following chapters.

Provinces define the eligibility age limit for protection services in their child welfare legislation. This age limit is not necessarily the same as the age of majority for the province, or the age limit for access to support services. Most provinces have legislation or policy in place to continue or extend services for children who reach the age of majority or the age of eligibility for protective services. These extended services are typically available to young adults who are attending school or are disabled, and who were in care or entered into a support agreement with a child welfare authority prior to reaching the age of majority. Table I (page 9) contains the age limit for protective intervention, the age of majority for each jurisdiction, and the extension of service provisions that define eligibility requirements.

10. TRIANGULAR COMPARISON OF CHILD PROTECTION AND PREVENTION IN CANADA, AUSTRALIA AND ENGLAND

Canada, Australia and England are different in government system; therefore their administrative arrangements including legislations, policies and protocols in relation to child protection services vary in some extent.

10.1 Roles Of Each Government In Relation To Child Protection

Canada is a confederation with a parliamentary democracy, which includes a constitutional monarchy and a federal system. Australia is a democratic, federal-state system with recognition the British monarch as

sovereign. The United Kingdom of Great Britain and Northern Ireland, islands in northern Europe, is a constitutional monarchy. Since Britain has three different legal systems, one of which is for England and Wales, this section focuses on England rather than Britain as a whole.

Since Canada is a federation, the federal government does not have the power to enact a child protection program without the agreement of the provinces. The functions of the federal and provincial governments with respect to child protection are complex and interrelated. Child protection falls under provincial jurisdiction, but indirectly receives some funds from the federal government. The design and delivery of child welfare services in Canada is the responsibility of the department of social services, or its equivalent, in each province and territory.

Like Canada, primary responsibility for protecting the interests of children in Australia rests with the governments of states and territories. The role of the Commonwealth government in children's affairs is mainly limited to issues of custody and child support that arise in divorce proceedings before the Family Court of Australia. The Commonwealth government also deals with issues related to the nation's international obligations.

Child protection in Australia is the responsibility of the community services department in each State and Territory. Children who come into contact with the community services departments for protective reasons include those: who have been or are being abused, neglected or otherwise harmed; and whose parents cannot provide adequate care or protection. The community services departments provide assistance to these children and their families through the provision of, or referral to, a wide range of services. Some of these services are targeted specifically at children in need of protection (and their families); others are available to a wider section of the population and attempt to deal with a broad range of issues or problems.

Unlike federal systems, the law in England is centralized; thus England's cities and counties have a degree of devolved responsibility,

control over child protection comes very much from the top. The basic responsibility for child protection is placed with Social Services Department located in 108 Local Authorities across the country that constitute local government. Local Authorities have a general duty to promote and safeguard children's welfare. But they are also required to take reasonable action to enable children's own families to look after them, as long as this does not place the child at risk of serious harm. In England, provision for children and their families is mainly seen as a state responsibility, within the context of welfare state.

10.2 Definition Of Abuse

Abusive treatment is defined within the following four main categories in Canada, Australian and England: physical abuse; sexual abuse; emotion abuse, and neglect. Seemingly, all three countries have struggled to find adequate definitions of child abuse and the need to draw distinctions between acceptable tradition child rearing practices and inappropriate child maltreatment. In particular, a punitive view of child rearing still persists among some sectors of the community in these countries. For example, in England it is ambivalence about what constitutes the dividing line between "physical abuse" of children and "physical punishment". As a result, physical punishment can still be defended in law by the claim that the child was subjected to reasonable chastisement used to control the child's misbehavior.

10.3 Legislations

Except Quebec, each province and territory of Canada is governed by common law (the Criminal Code of Canada) in matters relating to family law. The Criminal Code of Canada has several sections that deal with the child abuse: it states the law and defines the punishments for the offence. The Criminal Code also sets out two categories of offences: Summary conviction offences (generally less serious with lighter penalties) and Indictable offences (more serious crimes and the possibility of more

serious sentences). For some sections of the criminal code, the offence may be either a summary or an indictable offence, depending on the circumstances.

Each jurisdiction of Australia has its own legislations in relation to child protection. Some of which are as follows: Family Law Act 1975 (Commonwealth), Children and Young Persons (Care and Protection) Act 1998 (New South Wales), Children and Young Persons Act 1989 (Victoria), Child Protection Act 1999 and Health Act 1937 (Queensland), Child Welfare Act 1947 and Community Services Act 1972 (Western Australia), Family and Community Services Act 1972 and Children's Protection Act 1993 (South Australia), Children, Young Persons and Their Families Act 1997 and Alcohol and Drug Dependency Act 1968 (Tasmania), Children and Young People Act 1999 (Northern Territory), and Community Welfare Act 1983 (Australian Capital Territory).

The legal system for child protection in England encompasses both criminal and civil law, with civil law comprising public law (where there is dispute between an individual or a group of people and the state) and private law (where the dispute is between individuals). Criminal law involves the prosecution of crimes against children, including sexual assaults and violence. Civil public law applies when the state seeks to intervene to protect a child, either in the short or the long term. Civil private law applies when a private citizen such as a relative seeks to modify how a child is care for. Arrangements for child protection in England are framed within the Children Act, 1989. The Children Act is a large, integrated body of legislation, covering a wide range of matters concerned with children's welfare. It includes provisions for how disputes are settled in court, but also defines the obligations of state authorities in protecting children.

Unlike Canada and Australian (except Western Australian), England have none of mandatory reporting laws that legally obliged child welfare workers or professionals in general to report suspect abuse, but social workers in social services departments are placed under an obligation to

investigate all referrals. And while other professional groups are not under this legal obligation, almost without exception, most are required by their professional codes of practice and their employing agency to report any suspicion of abuse.

10.4 Delivery Of Protection Services

All of three countries: Canada, Australia and England have broadly similar legislation dealing with protecting the interest of children. The titles of the various acts differ, but all address the same issues: prevention of child abuse, and intervention when abuse occurs or when it is considered likely to occur. There are, however, differences to some extent in the way in which the various country acts were drafted and the manner in which their provisions are implemented. Despite these differences, which are relatively minor, all three countries' legislation on child protection is generally based on the principle that the best protection for children is usually to be found within the family. Nevertheless, it recognizes that intervention is necessary in instances where a child is considered to be at risk of abuse or where abuse has already occurred.

Besides, family support and counseling services are also provided before, in between and after the incidences of abuse all in Canada, Australia as well as England. Also, when there is a suspicion that child may have been abused, in order to eliminate the confrontational aspects of court cases involving children, closed circuit TV or videotaped evidence for child witnesses in abuse cases is applied in Canada, England and some Australian jurisdictions.

Retributive punishment or diversionary programs for the perpetrators of the abuse are implemented in all three countries as well.

11. CONCLUSION

Only recently has child maltreatment received recognition as a significant social problem, although child abuse and neglect have a long history. In 1893 the passing of the *Children's Protection Act* in Ontario ushered

in a new era in modern child welfare legislation protecting children from abuse and neglect. The following years saw a range of provincial legislative Acts, as child welfare was, and still is, defined in the Constitution as a provincial jurisdiction. Modern child welfare work has continued to struggle with dilemmas such as protection verses family preservation, or the “best interests” of the child verses the “least restrictive” measures of intervention.

“Child abuse ” can be defined in general as “the physical, psychological, social, emotional and sexual maltreatment of a child, whereby the survival, safety, self-esteem, growth and development of the person are threatened”.

According to the report of *1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS)*, child protection in Canada was found that:

- an estimated 61,201 child maltreatment investigations (45%) were substantiated, an estimated 20,668 child investigations (22%) remained suspected, and an estimated 44,704 child investigations (33%) were unsubstantiated;
- thirty-one percent of child investigations involved alleged physical abuse as the primary category of investigated maltreatment;
- most child investigations involved allegations against parents, biological mothers in particular;
- Eight percent of child maltreatment investigations led to a child being placed in child welfare care during the initial investigation;
- the incidence of investigated maltreatment ranged from 18.5 per 1,000 children among 12 to 15 year old males, to 25.08 per 1,000 for females in the same age group;

- twenty-nine percent of child maltreatment investigations involved children who lived with their two biological parents; and
- thirty-nine percent of child maltreatment investigations involved children in families that derived their primary income from full-time employment.

Although all child welfare systems share certain basic characteristics organized around investigating reports of alleged maltreatment, providing various types of counseling and supervision, and looking after children in out-of-home care, there is considerable variation in the organization of these services deliver systems. Likewise, child welfare legislations vary considerably.

In terms of the age range covered for child maltreatment investigation, some jurisdictions limit their investigation mandates to children under 16, while others extend their investigations to youth under 19.

The first step in the overall process of child protection is to obtain and record the initial response from a variety of sources to the report of abuse. Next, the worker determines if the child has been abused, and safety concerns, future risk, the capacity of the family to protect the child and any services that will be required. Verification decisions are critical in today's litigation-filled society, so the worker must document both the evidence of abuse and standard of proof. Finally, the social worker needs to complete a plan of service for both the child and family and keep careful records of the implementation of the plan.

Regarding protection in three countries: Canada, Australia and England, there is overlap in the problems faced by each country regardless of its economic resources, political structure, or whether the majority of the people live in urban or rural region. For instance, all three countries have difficulty finding adequate definitions of child abuse and the need to draw distinctions between acceptable traditional child rearing practices and inappropriate child maltreatment.

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CHILD WELFARE IN CANADA

—PART II—

Shin-ichi MATSUMOTO

This part study aims to research on the whole aspect of child protection in Canada. And so, this paper consists of five chapters as follows: ①Canadian history of child protection, ②definition of child abuse, ③current situation of child protection in Canada, ④outline of child protection and treatment, ⑤triangular comparison of child protection and prevention in Canada, Australia and England.

The first efforts at identifying and combating child abuse occurred in the latter part of the 19th century. Now, “child abuse” can be defined in general as the following 4 kinds of child maltreatment: ①Physical Abuse, ②Sexual Abuse, ③Emotional Abuse, ④Neglect. An estimated 135,573 child maltreatment investigations were carried out in Canada in 1998. As the result, about 45% of those investigations were substantiated, 22% of those remained suspected, and other 33% of those were unsubstantiated. All provinces and territories have each child protection statutes and systems, but the age ranges covered for child maltreatment investigations vary from under 16 to under 19 in those statutes.

This paper also notes briefly the triangular comparison of child protection in Canada, Australia, and England. All of these three countries have struggled to find adequate definitions of child abuse and the need to draw distinctions between acceptable tradition child rearing practices and inappropriate child maltreatment.

The consequences of this study anyway inform us that Canadian child protection systems and methods are very useful for Japanese child welfare agencies to reconstruct the child protection processes and methods concerning how to treat the abused children and their families because

Canadian people have a lot of advanced means of settling the child maltreatment.

Key words: History of Child Protection, Child Abuse,
Child Protection and Treatment Process,
Criminal Court Proceedings,
International Comparison of Child Protection